

## PART 32—PUBLIC SAFETY OFFICERS’ DEATH AND DISABILITY BENEFITS

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#### APPENDIX TO PART 32—PSOB HEARING AND APPEAL PROCEDURES

AUTHORITY: Part L of title I of the Omnibus Crime Control and Safe Streets Act of 1968, as amended (42 U.S.C. 3711 *et seq.*).

SOURCE: 57 FR 24913, June 11, 1992, unless otherwise noted.

### Subpart A—Death and Disability Benefits

#### § 32.1 Purpose and OMB control number.

(a) The purpose of this subpart is to implement the Public Safety Officers’ Benefits Act of 1976, as amended, which authorizes the Bureau of Justice Assistance, Office of Justice Programs, to pay a benefit of \$100,000, adjusted in accordance with § 32.3(b), to specified survivors or public safety officers found to have died as the direct and proximate result of a personal injury sustained in the line of duty, and to claimant public safety officers found to have been permanently and totally disabled as the direct result of a catastrophic injury sustained in the line of duty. The Act also authorizes funds to establish national programs to assist the families of public safety officers who have died in the line of duty. (The Act is subpart 1 of part L of title I of the Omnibus Crime Control and Safe Streets Act of 1968, as amended, 42 U.S.C. 3711 *et seq.*)

(b) The information collection requirements in this part have been approved by the Office of Management and Budget and have been assigned OMB control number 1121–0166.

[57 FR 24913, June 11, 1992, as amended at 62 FR 37715, July 15, 1997]

#### § 32.2 Definitions.

For purposes of this subpart—

(a) *The Act* means the Public Safety Officers’ Benefits Act of 1976, 42 U.S.C. 3796, *et seq.*, Public Law 94–430, 90 Stat. 1346 (September 29, 1976), as amended.

(b)(1) *Bureau* or *BJA* means the Bureau of Justice Assistance of the Office of Justice Programs;

(2) *PSOB* means the Public Safety Officers’ Benefits Program of the Bureau of Justice Assistance.

(c) *Line of duty* means:

(1) Any action which an officer whose primary function is crime control or reduction, enforcement of the criminal law, or suppression of fires is obligated

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or authorized by rule, regulations, condition of employment or service, or law to perform, including those social, ceremonial, or athletic functions to which the officer is assigned, or for which the officer is compensated, by the public agency he serves. For other officers, "line of duty" means any action the officer is so obligated or authorized to perform in the course of controlling or reducing crime, enforcing the criminal law, or suppressing fires; and

(2) Any action which an officially recognized or designated public employee member of a rescue squad or ambulance crew is obligated or authorized by rule, regulation, condition of employment or service, or law to perform.

(d) *Direct and proximate, direct, or proximate* means that the antecedent event is a substantial factor in the result.

(e) *Personal injury or injury* means any traumatic injury, as well as diseases which are caused by or result from such an injury, but not occupational diseases.

(f) *Catastrophic injury* means consequences of an injury that permanently prevent an individual from performing any gainful work.

(g) *Traumatic injury* means a wound or a condition of the body caused by external force, including injuries inflicted by bullets, explosives, sharp instruments, blunt objects or other physical blows, chemicals, electricity, climatic conditions, infectious diseases, radiation, and bacteria, but excluding stress and strain.

(h) *Permanent and total disability* means medically determinable consequences of a catastrophic, line-of-duty injury that permanently prevent a former public safety officer from performing any gainful work.

(i) *Occupational disease* means a disease which routinely constitutes a special hazard in, or is commonly regarded as a concomitant of the officer's occupation.

(j) *Public safety officer* means any individual serving a public agency in an official capacity, with or without compensation, as a law enforcement officer, firefighter, rescue squad member or ambulance crew member.

(k) *Public agency* means the United States, any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, the Trust Territories of the Pacific Islands, the Commonwealth of the Northern Mariana Islands, and any territory or possession of the United States, or any unit of local government, department, agency, or instrumentality of any of the foregoing.

(l) *Public employee* means an employee of a public agency.

(m) *Law enforcement officer* means any individual involved in crime and juvenile delinquency control or reduction, or enforcement of the criminal law, including but not limited to police, corrections, probation, parole, and judicial officers.

(n) *Firefighter* includes any individual serving as an officially-recognized or designated member of a legally-organized volunteer fire department.

(o) *Rescue squad or ambulance crew member* means an officially recognized or designated employee or member of a rescue squad or ambulance crew.

(p) *Prerequisite disability certification* means:

(1)(i) The employing agency's official, certified award to the claimant public safety officer of its maximum disability finding and compensation, including the officer's permanent and complete separation from the employing public safety agency as the direct result of an injury sustained in the line of duty; or

(ii) If the employing agency does not itself make such disability awards, then an official, certified award to the claimant public safety officer by the cognizant judicial, political or administrative agency or body of its maximum disability finding and compensation, including the officer's permanent and complete separation from the employing public safety agency as the direct result of an injury sustained in the line of duty.

(2) Nothing in this paragraph (p) shall be construed to affect State, municipal, or local laws, regulations, policies, or agencies, which have been or will be established for the purpose of granting public safety officer disability

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pensions, including heart and lung laws and similar benefits, nor is any standard for the granting of such benefits implied in any way by this part.

(q) *Gainful work* means work activity that is both substantial and gainful.

(1) *Substantial work activity* means work activity that involves doing significant physical or mental activities. Work may be substantial even if it is done on a part-time basis or if the public safety officer does less, gets paid less, or has less responsibility than when he or she was a member of the former employing public safety agency.

(2) *Gainful work activity* means work activity that is done for pay or profit. Work activity is gainful if it is the kind of work usually done for pay or profit, whether or not a profit is realized or pay is received.

(r) *Residual functional capacity* means that which a former public safety officer can still do despite limitations imposed by a disability. Residual functional capacity is a medical assessment, a determination to be made by the Office's medical experts. Such medical determination will be based on examination of prerequisite disability certifications as specified in 28 CFR 32.2(p), and by examination of any additional case specific medical and other relevant documentation necessary to a medical assessment and determination of residual functional capacity.

(s) *Age* means a former public safety officer's chronological age, and the extent to which that individual's age affects his or her ability to adapt to a new work situation or to do work in competition with others. PSOB will evaluate age in the context of residual functional capacity within the following general parameters:

(1) *Youthful* means that a former public safety officer under age 50 will generally be considered able to adapt to a new work activity and environment.

(2) *Early middle age* means that a former public safety officer, between age 50 and age 59, will generally be considered to experience significant difficulty in adapting to a new work activity and environment.

(3) *Middle and advanced age* means that a former public safety officer age 60 or over will generally be considered to experience substantial difficulty in

adapting to a new work activity or environment.

(t) *Education* means primarily the level and content of a former public safety officer's formal schooling, including vocational training. Education also includes completion of in-service training seminars and educational programs while a member of the former employing public safety agency or while formerly employed.

(u) *Work experience* means the skills and abilities acquired by the former public safety officer before, during and following service in the former public safety agency, suitable to use in adapting to a new work activity and environment.

(v) *Child* means any natural, illegitimate, adopted, or posthumous child or stepchild of a deceased public safety officer who, at the time of the public safety officer's death, is:

(1) Eighteen years of age or under;

(2) Over eighteen years of age and a student, as defined in section 8101 of title 5, United States Code; or

(3) Over eighteen years of age and incapable of self-support because of physical or mental disability.

(w) *Stepchild* means a child of the officer's spouse who was living with, dependent for support on, or otherwise in a parent-child relationship, as set forth in §32.13(b), with the officer at the time of the officer's death. The relationship of stepchild is not terminated by the divorce, remarriage, or death of the stepchild's natural or adoptive parent.

(x) *Student* means:

(1) An individual under 23 years of age who has not completed four years of education beyond the high school level and who is regularly pursuing a full-time course of study or training at an institution which is:

(i) A school or college or university operated or directly supported by the United States, or by a State or local government or political subdivision thereof;

(ii) A school or college or university which has been accredited by a State or by a State recognized or nationally recognized accrediting agency or body;

(iii) A school or college or university not so accredited but whose credits are accepted, on transfer, by at least three institutions which are so accredited for

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credit on the same basis as if transferred from an institution so accredited; or

(iv) An additional type of educational or training institution as defined by the Secretary of Labor.

(2) An individual is deemed to be a student during an interim between school years if the interim is not more than 4 months and if the student shows to the satisfaction of the Bureau, that the student intends to pursue a full-time course of study or training during the semester or other enrollment period immediately after the interim or during periods of reasonable duration during which, in the judgment of the Bureau, the student is prevented by factors beyond the student's control from pursuing the student's education. A student whose 23rd birthday occurs during a semester or other enrollment period is deemed a student until the end of the semester or other enrollment period.

(y) *Spouse* means the husband or wife of the deceased officer at the time of the officer's death, and includes a spouse living apart from the officer at the time of the officer's death for any reason.

(z) *Dependent* means any individual who was substantially reliant for support upon the income of the deceased public safety officer.

(aa) *Intoxication* means a disturbance of mental or physical faculties:

(1) Resulting from the introduction of alcohol into the body as evidenced by—

(i) A blood alcohol level of .20 per centum or greater; or

(ii) A blood alcohol level of at least .10 per centum unless the Bureau receives convincing evidence that the public safety officer was not acting in an intoxicated manner immediately prior to the officer's death or catastrophic personal injury which resulted in permanent and total disability; or

(2) Resulting from drugs or other substances in the body.

(bb) *Rescue* means the provision of first response emergency medical treatment, transportation of persons in medical distress and under emergency conditions to medical care facilities, or search and rescue assistance in locating and extracting from danger persons

lost, missing, or in imminent danger of bodily harm.

(cc) *Support* means food, shelter, clothing, ordinary medical expenses, and other ordinary and customary items for maintenance of the person supported.

[57 FR 24913, June 11, 1992, as amended at 61 FR 33657, June 28, 1996; 62 FR 37715, July 15, 1997]

### OFFICERS COVERED

#### § 32.3 Coverage.

(a) When the Bureau determines under this part, that a public safety officer, as defined in § 32.2(h) has died or become permanently and totally disabled as the direct and proximate result of an injury sustained in the line of duty, the Bureau shall pay a benefit of \$100,000, adjusted in accordance with § 32.3 (b) or (c), subject to the conditions set forth in § 32.6. Payment of death benefits shall be made in the order specified in § 32.10.

(b) For the death benefit program, on October 1 of each fiscal year after October 15, 1988, the Bureau shall adjust the level of the death benefit payable immediately before such October 1 under paragraph (a) of this section, to reflect the annual percentage change in the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics, occurring in the 1-year period ending on June 1 immediately preceding such October 1.

(c) For the disability benefit program, the annual cost of living adjustment shall be made in accordance with the effective date of the enactment of this program, *viz.* November 29, 1990.

(d) The amount payable under paragraph (a) of this section with respect to the death or permanent and total disability of a public safety officer shall be the amount payable under paragraphs (b) or (c) of this section as of the date of death or permanent and total disability of such officer, as the case may be.

#### § 32.4 Reasonable doubt of coverage.

The Bureau shall resolve any reasonable doubt arising from the circumstances of the officer's death or permanent and total disability in favor

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of payment of the death or disability benefit.

### **§ 32.5 Findings of State, local, and Federal agencies.**

The Bureau will give substantial weight to the evidence and findings of fact presented by State, local, and Federal administrative and investigative agencies. The Bureau will request additional assistance or conduct its own investigation when it believes that the existing evidence does not provide the Bureau with a rational basis for a decision on a material element of eligibility.

### **§ 32.6 Conditions on payment.**

(a) No benefit shall be paid—

(1) If the death or permanent and total disability was caused by the intentional misconduct of the public safety officer or by such officer's intention to bring about the officer's death or injury;

(2) If the public safety officer was voluntarily intoxicated at the time of the officer's death or catastrophic personal injury;

(3) If the public safety officer was performing the officer's duties in a grossly negligent manner at the time of the officer's death or catastrophic personal injury;

(4) To any individual who would otherwise be entitled to a benefit under this part if such individual's actions were a substantial contributing factor to the death of the public safety officer; or

(5) To any individual employed in a capacity other than a civilian capacity.

(b) The Act applies to State and local public safety officers killed in the line of duty on or after September 29, 1976; federal public safety officers killed on or after October 12, 1984; rescue squad or public emergency employees killed in the line of duty on or after October 15, 1986; and to each of these classes of officers permanently and totally disabled as a result of a catastrophic personal injury received in the line of duty on or after November 29, 1990.

### **§ 32.7 Intentional misconduct of the officer.**

The Bureau will consider at least the following factors in determining

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whether death or permanent and total disability was caused by the intentional misconduct of the officer:

(a) Whether the conduct was in violation of rules and regulations of the employer, or ordinances and laws, and—

(1) Whether the officer knew the conduct was prohibited and understood its import;

(2) Whether there was a reasonable excuse for the violation; or

(3) Whether the rule violated is habitually observed and enforced;

(b) Whether the officer had previously engaged in similar misconduct;

(c) Whether the officer's intentional misconduct was a substantial factor in the officer's death or permanent and total disability; and

(d) Whether there was an intervening force which would have independently caused the officer's death or permanent and total disability and which would not otherwise prohibit payment of a benefit pursuant to this part.

### **§ 32.8 Intention to bring about death or permanent and total disability.**

The Bureau will consider at least the following factors in determining whether the officer intended to bring about the officer's own death or injury:

(a) Whether the death or permanent and total disability was caused by insanity, through an uncontrollable impulse or without conscious volition to produce death or injury;

(b) Whether the officer had a prior history of attempted suicide or attempts to cause physical incapacitation;

(c) Whether the officer's intent to bring about the officer's death or injury was a substantial factor in the officer's death or permanent and total disability; and

(d) The existence of an intervening force or action which would have independently caused the officer's death or permanent and total disability and which would not otherwise prohibit payment of a benefit pursuant to this part.

### **§ 32.9 Voluntary intoxication.**

The Bureau will apply the following evidentiary factors in cases in which voluntary intoxication is at issue in an

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officer's death or permanent and total disability.

(a) The primary factor in determining intoxication at the time the injury occurred, from which death or permanent and total disability resulted, is the blood alcohol level, including a post-mortem blood alcohol level in the case of a death.

(1) Benefits will be denied if a deceased or permanently and totally disabled public safety officer had a blood alcohol level of .20 per centum or greater; or

(2) Benefits will be denied if a deceased or permanently and totally disabled public safety officer had a blood alcohol level of at least .10 per centum but less than .20 per centum unless the Bureau receives convincing evidence that the public safety officer was not acting in an intoxicated manner immediately prior to death or the receipt of a catastrophic personal injury.

(b) Convincing evidence includes, but is not limited to: Affidavits or investigative reports demonstrating that the deceased or permanently and totally disabled public safety officer's speech, movement, language, emotion, and judgment were normal (for the officer) immediately prior to the injury which caused the death or the permanent and total disability.

(c) In determining whether an officer's intoxication was voluntary, the Bureau will consider:

(1) Whether, and to what extent, the officer had a prior history of voluntary intoxication while in the line of duty;

(2) Whether and to what degree the officer had previously used the intoxicant in question; and

(3) Whether the intoxicant was prescribed medically and was taken within the prescribed dosage.

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#### § 32.10 Order of priority.

(a) When the Bureau had determined that a death benefit may be paid according to the provisions of this subpart, a benefit of \$100,000, adjusted in accordance with § 32.3(b), shall be paid in the following order of precedence:

(1) If there is no surviving child of such officer, to the surviving spouse of such officer;

(2) If there are a surviving child or children and a surviving spouse, one-half to the surviving child or children of such officer in equal shares, and one-half to the surviving spouse;

(3) If there is no surviving spouse, to the surviving child or children of such officer in equal shares; or

(4) If none of the above in paragraphs (a)(1) through (3) of this section to the surviving parent, or to the surviving parents in equal shares.

(b) If no one qualifies as provided in paragraph (a) of this section, no benefit shall be paid.

[57 FR 24913, June 11, 1992, as amended at 62 FR 37715, July 15, 1997]

#### § 32.11 Contributing factor to death.

(a) No death benefit shall be paid to any person who would otherwise be entitled to a death benefit under this part if such person's intentional actions were a substantial contributing factor to the death of the public safety officer.

(b) When a potential beneficiary is denied death benefits under paragraph (a) of this section, the benefits shall be paid to the remaining eligible survivors, if any, of the officer as if the potential beneficiary denied death benefits did not survive the officer.

#### § 32.12 Determination of relationship of spouse.

(a) Marriage should be established by one (or more) of the following types of evidence in the following order of preference:

(1) Copy of the public record of marriage, certified or attested, or by an abstract of the public record, containing sufficient data to identify the parties, the date and place of the marriage, and the number of prior marriages by either party if shown on the official record, issued by the officer having custody of the record or other public official authorized to certify the record, or a certified copy of the religious record of marriage;

(2) Official report from a public agency as to a marriage which occurred while the officer was employed with such agency;

(3) The affidavit of the clergyman or magistrate who officiated;

(4) The original certificate of marriage accompanied by proof of its genuineness and the authority of the person to perform the marriage;

(5) The affidavits or sworn statements of two or more eyewitnesses to the ceremony;

(6) In jurisdictions where “common law” marriages are recognized, the affidavits or certified statements of the spouse setting forth all of the facts and circumstances concerning the alleged marriage, such as the agreement between the parties at the beginning of their cohabitation, the period of cohabitation, places and dates of residences, and whether children were born as the result of the relationship. This evidence should be supplemented by affidavits or certified statements from two or more persons who know as the result of personal observation the reputed relationship which existed between the parties to the alleged marriage including the period of cohabitation, places of residences, whether the parties held themselves out as husband and wife and whether they were generally accepted as such in the communities in which they lived; or

(7) Any other evidence which would reasonably support a belief by the Bureau that a valid marriage actually existed.

(b) BJA will not recognize a claimant as a “common law” spouse under § 32.12(a)(6) unless the State of domicile recognizes him or her as the spouse of the officer.

(c) If applicable, certified copies of divorce decrees of previous marriages or death certificates of the former spouses of either party must be submitted.

**§ 32.13 Determination of relationship of child.**

(a) *In general.* A claimant is the child of a public safety officer if the individual’s birth certificate shows the officer as the individual’s parent.

(b) *Alternative.* If the birth certificate does not show the public safety officer as the claimant’s parent, the sufficiency of the evidence will be determined in accordance with the facts of a particular case. Proof of the relationship may consist of—

(1) An acknowledgement in writing signed by the public safety officer; or

(2) Evidence that the officer has been identified as the child’s parent by a judicial decree ordering the officer to contribute to the child’s support or for other purposes; or

(3) Any other evidence which reasonably supports a finding of a parent-child relationship, such as—

(i) A certified copy of the public record of birth or a religious record showing that the officer was the informant and was named as the parent of the child; or

(ii) Affidavits or sworn statements of persons who know that the officer accepted the child as his or her own; or

(iii) Information obtained from a public agency or public records, such as school or welfare agencies, which shows that with the officer’s knowledge the officer was named as the parent of the child.

(c) *Adopted child.* Except as may be provided in paragraph (b) of this section, evidence of relationship must be shown by a certified copy of the decree of adoption and such evidence as may be necessary. In jurisdictions where petition must be made to the court for release of adoption documents or information, or where the release of such documents or information is prohibited, a revised birth certificate will be sufficient to establish the fact of adoption.

(d) *Stepchild.* The relationship of a stepchild to the deceased officer shall be demonstrated by—

(1)(i) Evidence of birth to the spouse of the officer as required by paragraphs (a) and (b) of this section; or

(ii) If adopted by the spouse, evidence of adoption as required by paragraph (c) of this section; or

(iii) Other evidence, such as that specified in § 32.13(b), which reasonably supports the existence of a parent-child relationship between the child and the spouse;

(2) Evidence that the stepchild was either—

(i) Living with; or

(ii) Dependent for support, as set forth in § 32.15; or

(iii) In a parent-child relationship, as set forth in § 32.13(b), with the officer at the time of the officer’s death; and

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(3) Evidence of the marriage of the officer and the spouse, as required by § 32.12.

### § 32.14 Determination of relationship of parent.

(a) *In general.* A claimant is the parent of a public safety officer if the officer's birth certificate shows the claimant as the officer's parent.

(b) *Alternative.* If the birth certificate does not show the claimant as the officer's parent, proof of the relationship may be shown by—

(1) An acknowledgement in writing signed by the claimant before the officer's death; or

(2) Evidence that the claimant has been identified as the officer's parent by judicial decree ordering the claimant to contribute to the officer's support or for other purposes; or

(3) Any other evidence which reasonably supports a finding of a parent-child relationship, such as:

(i) A certified copy of the public record of birth or a religious record showing that the claimant was the informant and was named as the parent of the officer; or

(ii) Affidavits or sworn statements of persons who know the claimant had accepted the officer as the claimant's child; or

(iii) Information obtained from a public agency or public records, such as school or welfare agencies, which shows that with the officer's knowledge the claimant had been named as the parent of the child.

(c) *Adoptive parent.* Except as provided in paragraph (b) of this section, evidence of relationship must be shown by a certified copy of the decree of adoption and such other evidence as may be necessary. In jurisdictions where petition must be made to the court for release of adoption documents or information, or where release of such documents or information is prohibited, a revised birth certificate showing the claimant as the officer's parent will suffice.

(d) *Step-parent.* The relationship of a step-parent to the deceased officer shall be demonstrated by—

(1)(i) Evidence of the officer's birth to the spouse of the step-parent as required by § 32.13 (a) and (b); or

(ii) If adopted by the spouse or the step-parent, proof of adoption as required by § 32.13(c); or

(iii) Other evidence, such as that specified in paragraph (b) of this section, which reasonably supports a parent-child relationship between the spouse and the officer; and

(2) Evidence of the marriage of the spouse and the step-parent, as required by § 32.12.

### § 32.15 Determination of dependency.

(a) To be eligible for a death benefit under the Act, a stepchild not living with the deceased officer at the time of the officer's death shall demonstrate that he or she was substantially reliant for support upon the income of the officer.

(b) The claimant stepchild shall demonstrate that he or she was dependent upon the decedent at either the time of the officer's death or of the personal injury that was the substantial factor in the officer's death.

(c) The claimant stepchild shall demonstrate dependency by submitting a signed statement of dependency within a year of the officer's death. This statement shall include the following information—

(1) A list of all sources of income or support for the twelve months preceding the officer's injury or death;

(2) The amount of income or value of support derived from each source listed; and

(3) The nature of support provided by the each source.

(d) Generally, the Bureau will consider a stepchild "dependent" if he or she was reliant on the income of the deceased officer for over one-third of his or her support.

## INTERIM AND REDUCED DEATH PAYMENTS

### § 32.16 Interim payment in general.

(a) Whenever the Bureau determines upon a showing of need and prior to final action that the death of a public safety officer is one with respect to which a benefit will probably be paid, the Bureau may make an interim benefit payment not exceeding \$3,000 to the individual entitled to receive a



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benefit under §§ 32.10 through 32.15 of this part.

(b) The amount of an interim payment under this subpart shall be deducted from the amount of any final benefit paid to such individual.

[57 FR 24913, June 11, 1992, as amended at 62 FR 37715, July 15, 1997]

## § 32.17 Repayment and waiver of repayment.

Where there is no final benefit paid, the recipient of any interim benefit paid under § 32.16 shall be liable for repayment of such amount. The Bureau may waive all or part of such repayment considering for this purpose the hardship which would result from such repayment.

## § 32.18 Reduction of payment.

(a) The benefit payable under this part shall be in addition to any other benefit that may be due from any other source, except—

(1) Payments authorized by section 12(k) of the Act of September 1, 1916, as amended (D.C. Code, Sec. 4-622);

(2) Benefits authorized by section 8191 of title 5, United States Code, providing compensation for law enforcement officers not employed by the United States killed in connection with the commission of a crime against the United States. Such beneficiaries shall only receive benefits under such section 8191 that are in excess of the benefits received under this part; and

(3) The amount of the interim benefit payment made to the claimant pursuant to § 32.16.

(b) No benefit paid under this part shall be subject to execution or attachment.

(c) No benefit is payable under this part:

(1) With respect to the death of a public safety officer if a benefit is paid under this part with respect to the disability of such public safety officer; or

(2) With respect to the disability of a public safety officer if a benefit is payable under this part with respect to the death of such public safety officer.

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### FILING AND PROCESSING OF CLAIMS

## § 32.19 Persons executing claims.

(a) The Bureau shall determine who is the proper party to execute a claim in accordance with paragraphs (a) (1) through (3) of this section—

(1) The claim shall be executed by the claimant or the claimant's legally designated representative if the claimant is mentally competent and physically able to execute the claim.

(2) If the claimant is mentally incompetent or physically unable to execute the claim and—

(i) Has a legally appointed guardian, committee, or other representative, the claim may be executed by such guardian, committee, or other representative; or

(ii) Is in the care of an institution, the claim may be executed by the manager or principal officer of such institution.

(3) For good cause shown, such as the age or prolonged absence of the claimant, the Bureau may accept a claim executed by a person other than one described in paragraphs (a)(1) and (a)(2) of this section.

(b) Where the claim is executed by a person other than the claimant, such person shall, at the time of filing the claim or within a reasonable time thereafter, file evidence of such person's authority to execute the claim on behalf of such claimant in accordance with paragraph (b) (1) and (2) of this section—

(1) If the person executing the claim is the legally-appointed guardian, committee, or other legally-designated representative of such claimant, the evidence shall be a certificate executed by the proper official of the court of appointment.

(2) If the person executing the claim is not such a legally designated representative, the evidence shall be a statement describing such person's relationship to the claimant or the extent to which such person has the care of such claimant or such person's position as an officer of the institution of which the claimant is an inmate or patient. The Bureau may, at any time, require additional evidence to establish

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the authority of any such person to file or withdraw a claim.

### § 32.20 Claims.

(a) Claimants are encouraged to submit their claims on OJP Form 3650/5 for death benefits, or the disability benefits claim form, which can be obtained from: Public Safety Officers' Benefits Program, Bureau of Justice Assistance, Washington, DC 20531.

(b) Where an individual files OJP Form 3650/5 for death benefits, or the disability benefits claim form, or other written statement with the Bureau which indicates an intention to claim benefits, the filing of such written statement shall be considered to be the filing of a claim for benefits.

(c) A claim by a permanently and totally disabled public safety officer or on behalf of survivor of a deceased public safety officer shall be filed within 1 year after the date of death or prerequisite disability certification unless the time for filing is extended by the Director for good cause shown.

(d) Except as otherwise provided in this part, the withdrawal of a claim, the cancellation of a request for such withdrawal, or any notice provided for pursuant to the regulations in this part, shall be in writing and shall be signed by the claimant or the person legally designated to execute a claim under § 32.19.

### § 32.21 Evidence.

(a) A claimant for any benefit or fee under the Act and this part shall submit such evidence of eligibility or other material facts as is specified by this part. The Bureau may require at any time additional evidence to be submitted with regard to entitlement, the right to receive payment, the amount to be paid, or any other material issue.

(b) Whenever a claimant for any benefit or fee under the Act and this part has submitted no evidence or insufficient evidence of any material issue or fact, the Bureau shall inform the claimant what evidence is necessary for a determination as to such issue or fact and shall request the claimant to submit such evidence within a reasonably specified time. The claimant's failure to submit evidence on a material issue or fact as requested by the

Bureau shall be a basis for determining that the claimant fails to satisfy the conditions required to award a benefit or fee or any part thereof.

(c) In cases where a copy of a record, document, or other evidence, or an excerpt of information therefrom, is acceptable as evidence in lieu of the original, such copy or excerpt shall, except as may otherwise clearly be indicated thereon, be certified as a true and exact copy or excerpt by the official custodian of such record, or other public official authorized to certify the copy.

### § 32.22 Representation.

(a) A claimant may be represented in any proceeding before the Bureau by an attorney or other person authorized to act on behalf of the claimant pursuant to § 32.19.

(b) No contract for a stipulated fee or for a fee on a contingent basis will be recognized. Any agreement between a representative and a claimant in violation of this subsection is void.

(c) Any individual who desires to charge or receive a fee for services rendered for an individual in any application or proceeding before the Bureau must file a written petition therefore in accordance with paragraph (e) of this section. The amount of the fee the petitioner may charge or receive, if any, shall be determined by the Bureau on the basis of the factors described in paragraphs (e) and (g) of this section.

(d) Written notice of a fee determination made under this section shall be mailed to the representative and the claimant at their last known addresses. Such notice shall inform the parties of the amount of the fee authorized, the basis of the determination, and the fact that the Bureau assumes no responsibility for payment.

(e) To obtain approval of a fee for services performed before the Bureau, a representative, upon completion of the proceedings in which the representative rendered services, must file with the Bureau a written petition containing the following information—

(1) The dates the representative's services began and ended;

(2) An itemization of services rendered with the amount of time spent in hours, or parts thereof;

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(3) The amount of the fee the representative desires to charge for services performed;

(4) The amount of fee requested or charged for services rendered on behalf of the claimant in connection with other claims or causes of action arising from the officer's death or permanent and total disability before any State or Federal court or agency;

(5) The amount and itemization of expenses incurred for which reimbursement has been made or is expected;

(6) The special qualifications which enabled the representative to render valuable services to the claimant (this requirement does not apply where the representative is an attorney); and

(7) A statement showing that a copy of the petition was sent to the claimant and that the claimant was advised of the claimant's opportunity to submit his or her comments on the petition to BJA within 20 days.

(f) No fee determination will be made by the Bureau until 20 days after the date the petition was sent to the claimant. The Bureau encourages the claimant to submit comments on the petition to the Bureau during the 20-day period.

(g) In evaluating a request for approval of a fee, the purpose of the public safety officers' benefits program—to provide a measure of economic security for the beneficiaries thereof—will be considered, together with the following factors:

(1) The services performed (including type of service);

(2) The complexity of the case;

(3) The level of skill and competence required to render the services;

(4) The amount of time spent on the case;

(5) The results achieved;

(6) The level of administrative review to which the claim was carried within the Bureau and the level of such review at which the representative entered the proceedings;

(7) The amount of the fee requested for services rendered, excluding the amount of any expenses incurred, but including any amount previously authorized or requested;

(8) The customary fee for this kind of service; and

(9) Other awards in similar cases.

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(h) In determining the fee, the Bureau shall consider and add thereto the amount of reasonable and unreimbursed expenses incurred in establishing the claimant's case. No amount of reimbursement shall be permitted for expenses incurred in obtaining medical or documentary evidence in support of the claim which had previously been obtained by the Bureau, and no reimbursement shall be allowed for expenses incurred in establishing or pursuing the representative's application for approval of the fee.

### DETERMINATION, HEARING, AND REVIEW

#### § 32.23 Finding of eligibility or ineligibility.

Upon making a finding of eligibility, the Bureau shall notify each claimant of its disposition of his or her claim. In those cases where the Bureau has found the claimant to be ineligible for a benefit, the Bureau shall specify the reasons for the finding. The finding shall set forth the findings of fact and conclusions of law supporting the decision. A copy of the decision, together with information as to the right to a hearing and review shall be mailed to the claimant at his or her last known address.

#### § 32.24 Request for a hearing.

(a) A claimant may, within thirty (30) days after notification of ineligibility by the Bureau, request the Bureau to reconsider its finding of ineligibility. The Bureau shall provide the claimant the opportunity for an oral hearing which shall be held within 60 days after the request for reconsideration. The claimant may waive the oral hearing and present written evidence to the Bureau within 60 days after the request. The request for hearing shall be made to the Director, Public Safety Officers' Benefits Program, BJA, Washington, DC 20531.

(b) If requested, the oral hearing shall be conducted before a hearing officer authorized by the Bureau to conduct the hearing in any location agreeable to the claimant and the hearing officer.

(c) In conducting the hearing, the hearing officer shall not be bound by

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common law or statutory rules of evidence, by technical or formal rules of procedure, or by chapter 5 of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*), but must conduct the hearing in such manner as to best ascertain the rights of the claimant. For this purpose, the hearing officer shall receive such relevant evidence as may be introduced by the claimant and shall, in addition, receive such other evidence as the hearing officer may determine to be necessary or useful in evaluating the claim. Evidence may be presented orally or in the form of written statements and exhibits. The hearing shall be recorded, and the original of the complete transcript shall be made a part of the claims record.

(d) Pursuant to sections 805, 806 and 1205(a) of the Omnibus Crime Control and Safe Streets Act of 1968, as amended, 42 U.S.C. 3786, 3787 and 3796c, the hearing officer may, whenever necessary:

- (1) Issue subpoenas;
- (2) Administer oaths;
- (3) Examine witnesses; and

(4) Receive evidence at any place in the United States.

(e) If the hearing officer believes that there is relevant and material evidence available which has not been presented at the hearing, the hearing officer may adjourn the hearing and, at any time prior to mailing the decision, reopen the hearing for the receipt of such evidence.

(f) A claimant may withdraw his or her request for a hearing at any time prior to the mailing of the decision by written notice to the hearing officer so stating, or by orally so stating at the hearing. A claimant shall be deemed to have abandoned his or her request for a hearing if he or she fails to appear at the time and place set for the hearing, and does not, within 10 days after the time set for the hearing, show good cause for such failure to appear.

(g) The hearing officer shall, within 30 days after receipt of the last piece of evidence relevant to the proceeding, make a determination of eligibility. The determination shall set forth the findings of fact and conclusions of law supporting the determination. The hearing officer's determination shall be the final agency decision, except when

it is reviewed by the Director under paragraphs (h) or (i) of this section.

(h)(1) The Director may, on his or her own motion, review a determination made by a hearing officer. If the BJA Director decides to review the determination, he or she shall:

(i) Inform the claimant of the hearing officer's determination and the BJA Director's decision to review that determination; and

(ii) Give the claimant 30 days to comment on the record and offer new evidence or argument on the issues in controversy.

(2) The BJA Director, in accordance with the facts found on review, may affirm or reverse the hearing officer's determination. The BJA Director's determination shall set forth the findings of fact and conclusions of law supporting the determination. The BJA Director's determination shall be the final agency decision.

(i)(1) A claimant determined ineligible by a hearing officer under paragraph (g) of this section may, within 30 days after notification of the hearing officer's determination:

(i) Request the BJA Director to review the record and the hearing officer's determination; and

(ii) Comment on the record and offer new evidence or argument on the issues in controversy.

(2) The BJA Director shall make the final agency determination of eligibility within 30 days after expiration of the comment period. The notice of final determination shall set forth the findings of fact and conclusions of law supporting the determination. The BJA Director's determination shall be the final agency decision.

(j) No payment of any portion of a death or permanent and total disability benefit, except interim death benefits payable under § 32.16, shall be made until all hearings and reviews which may affect that payment have been completed.

NATIONAL PROGRAMS FOR FAMILIES OF  
PUBLIC SAFETY OFFICERS WHO HAVE  
DIED IN THE LINE OF DUTY

### § 32.25 National programs.

The Director is authorized and directed to use up to \$150,000 of the funds

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appropriated for this part to establish national programs to assist the families of public safety officers who have died in the line of duty.

### Subpart B—Public Safety Officers' Educational Assistance

SOURCE: 62 FR 37716, July 15, 1997, unless otherwise noted.

#### § 32.31 Purpose.

This subpart implements the Federal Law Enforcement Dependents Assistance Act of 1996, as amended by the Police, Fire, and Emergency Assistance Act of 1998, which authorizes the payment of financial assistance for the purpose of higher education to the dependents of public safety officers who are found, under the provisions of subpart A of this part, to have died as a direct and proximate result of a personal injury sustained in the line of duty, or to have been permanently and totally disabled as the direct result of a catastrophic injury sustained in the line of duty.

[64 FR 49953, Sept. 14, 1999]

#### § 32.32 Definitions.

For purposes of this subpart:

(a) The *Act* means the Federal Law Enforcement Dependents Assistance Act of 1996, Public Law 104–238, Oct. 3, 1996, as amended by the Police, Fire, and Emergency Assistance Act of 1998, Public Law 104–238, codified as Subpart 2 of Part L of title I of the Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. 3796d *et seq.*

(b)(1) *Bureau* means the Bureau of Justice Assistance of the Office of Justice Programs, which is authorized to implement the provisions of this subpart.

(2) *PSOB* means the Public Safety Officers' Benefits program administered by the Bureau under subpart A of this part.

(3) *PSOEA* means the Public Safety Officers' Educational Assistance program administered by the Bureau under this subpart.

(c) *Public safety officer* is an officer as defined in § 32.2(j), with respect to whom PSOB benefits have been approved under subpart A of this part on

account of the officer's death or disability in the line of duty.

(d) *Child* means any person who was the biological, adopted, or posthumous child, or the stepchild, of a public safety officer at the time of the officer's death or disabling injury with respect to which PSOB benefits were approved under subpart A of this part. A stepchild must meet the provisions set forth in § 32.15.

(e) *Spouse* means the husband or wife of a deceased or permanently and totally disabled officer at the time of the officer's death or disabling injury with respect to which PSOB benefits were approved under subpart A of this part, and includes a spouse living apart from the officer at that time for any reason.

(f) *Dependent* means the child or spouse of any eligible public safety officer.

(g) *Program of education* means any curriculum or any combination of unit courses or subjects pursued at an eligible educational institution, which generally is accepted as necessary to fulfill requirements for the attainment of a predetermined and identified educational, professional, or vocational objective. It includes course work for the attainment of more than one objective if, in addition to the previous requirements, all of the objectives generally are recognized as reasonably related to a single career field.

(h) *Eligible educational institution* means a postsecondary institution which—

(1) Is described in section 481 of the Higher Education Act of 1965 (20 U.S.C. 1088), as in effect on October 3, 1996, including—

(i) An institution of higher education as defined in section 1201(a) of such Act (20 U.S.C. 1141(a)),

(ii) A proprietary institution of higher education,

(iii) A postsecondary vocational institution, or

(iv) A foreign medical school; and

(2) Is eligible to participate in student assistance programs under title IV of such Act (20 U.S.C. 1070 *et seq.*).

(i) *Satisfactory progress* means that the dependent is maintaining satisfactory progress in the program of education, as determined under section

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484(c) of the Higher Education Act of 1965, as amended (20 U.S.C. 1091(c)).

(j) *Educational expenses* means tuition, room and board, books, supplies, fees, and transportation expenses that are consistent with the educational, professional or vocational objectives set forth by the applicant in the application for assistance.

[62 FR 37716, July 15, 1997, as amended at 64 FR 49953, Sept. 14, 1999]

### § 32.33 Eligibility for assistance.

(a) Subject to the availability of appropriations, and the provisions of the Act and this subpart, the Bureau shall provide financial assistance to a dependent who attends a program of education at an eligible educational institution and is—

(1) The child of any public safety officer with respect to whom PSOB benefits have been approved under subpart A of this part;

(2) The spouse of such an officer at the time of the officer's death or on the date of the officer's totally and permanently disabling injury.

(b) The educational assistance under this subpart is intended for the sole purpose of defraying the costs of educational expenses and may only be used to defray such costs. A certification of educational use will be required.

(c) No child shall be eligible for assistance under this subpart after the child's 27th birthday, absent a finding by the Bureau of extraordinary circumstances precluding the child from pursuing a program of education, including but not limited to the death of a relative, personal injury or illness of the student, military service, or financial hardship.

(d) No dependent shall receive assistance under this subpart for a period in excess of forty-five months of full-time education or training, or a proportionate period of time for a part-time program.

[62 FR 37716, July 15, 1997, as amended at 64 FR 49953, Sept. 14, 1999]

### § 32.34 Application for assistance.

(a) A person seeking assistance under this subpart shall submit an application to the Bureau in such form and containing such information as the Bu-

reau may reasonably require. The provisions of § 32.21 relating to evidence shall apply to applications under this subpart.

(b) An applicant for assistance under this subpart must establish that the Bureau previously has received and approved a claim for PSOB benefits under subpart A of this part with respect to the death or disability of the parent or spouse of the applicant.

(1) A spouse or child recognized as the beneficiary of a PSOB claim under subpart A of the part with respect to a deceased officer will be recognized as a spouse or child for purposes of this subpart.

(2) In the case of a disabled public safety officer approved for PSOB benefits under subpart A of this part, applicants for assistance under this subpart must submit birth or marriage certificates or other proof of relationship consistent with §§ 32.12 (spouse) and 32.13 (child), if such evidence had not been submitted with respect to the PSOB claim.

(c) The application shall describe the program of education at an eligible educational institution, and the educational expenses for which assistance is sought. A request for assistance may be for prospective assistance, for retroactive benefits pursuant to § 32.35 (if applicable), or both.

(d)(1) A request for prospective assistance must be accompanied by a certified copy of the official letter of acceptance from the eligible educational institution (on official letterhead) to the dependent, accepting the applicant into an educational program.

(2) The applicant also shall submit to the Bureau, when it is available, the schedule of classes in which the applicant is enrolled, and which must be consistent with the educational, professional, or vocational objectives stated in the application.

(e) An applicant may be represented in any proceeding before the Bureau by an attorney or other person authorized to act on behalf of the applicant pursuant to §§ 32.19 and 32.22.

[62 FR 37716, July 15, 1997, as amended at 64 FR 49953, Sept. 14, 1999]

**§ 32.35 Retroactive benefits.**

(a) Each dependent of a Federal law enforcement officer killed in the line of duty on or after May 1, 1992, or permanently and totally disabled in the line of duty on or after October 3, 1996, and each dependent of a public safety officer killed in the line of duty on or after October 1, 1997, shall be eligible for assistance, on the same basis and subject to the limitations of this subpart, for each month in which the dependent had pursued a program of education at an eligible educational institution.

(b) To be eligible for retroactive benefits, the applicant must submit a certified copy of transcripts from the educational institution covering the relevant time period. No application will be accepted more than five years from the last date the applicant pursued such program of education.

(c) Subject to applicable limitations, retroactive benefits shall be in addition to prospective assistance provided under this subpart. A dependent eligible for retroactive benefits may choose to waive such assistance and apply only for prospective assistance under the provisions of this subpart.

[62 FR 37716, July 15, 1997, as amended at 62 FR 39120, July 22, 1997; 64 FR 49953, Sept. 14, 1999]

**§ 32.36 Action on applications for assistance.**

(a) After examining the application for prospective or retroactive assistance under the provisions and limitations of this subpart, and any additional relevant information, the Bureau shall notify the dependent in writing of the approval or disapproval of the application.

(b) If the application is denied, in whole or part, the Bureau shall explain the reasons for the denial. A copy of the decision, together with information as to the right to an appeal, shall be mailed to the applicant's last known address.

**§ 32.37 Determination of benefits.**

(a)(1) Financial assistance under this subpart shall consist of direct payments to an eligible dependent and shall be computed on the basis set forth in 38 U.S.C. 3532.

(2) The dependent's status as a full-time, three-quarter-time, half-time, or less-than-half-time student will be determined in accordance with the requirements of, and must be certified by, the eligible educational institution.

(b) In applying the limitations under this subpart with respect to prospective assistance, the Bureau shall consider any retroactive benefits provided to the dependent pursuant to § 32.35.

(c) Benefits payable under this subpart shall be in addition to any other benefit that may be due from any other source, except that, if the PSOEAs assistance in combination with other benefits would exceed the total approved costs for the applicant's program of education, the assistance under this subpart will be reduced by the amount of such excess.

(d) Benefits will be calculated in such a manner so as to ensure those applicants who qualify for benefits, and who are in financial need, i.e. would be unable to attend a program of study at a qualified institution of higher education in the absence of the total benefit for which they qualify, receive priority in receiving the authorized assistance. Those qualified applicants who are in financial need, as determined by BJA, will receive an amount of benefits to which they are entitled, and which allow them to attend the approved program of study. Those qualified applicants whose attendance at a program of study at an institution of higher education is not contingent on the award of benefits under this part, may receive a reduced amount of benefits in the event that funds appropriated under this program are not sufficient to award all qualified applicants the total amount of benefits to which they are otherwise entitled.

[62 FR 37716, July 15, 1997, as amended at 64 FR 49954, Sept. 14, 1999]

**§ 32.38 Denial of benefits.**

(a) No benefit shall be paid under this subpart if the Bureau determines that the dependent is not eligible for, is no longer eligible for, or is not entitled to the assistance for which application is made. Without limitation, this will include circumstances in which—

(1) The benefits would exceed the applicable durational limits;

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(2) A dependent child has exceeded the age limit for benefits;

(3) The dependent has failed to maintain satisfactory progress in the selected program of education as defined in § 32.32(i);

(4) The dependent is in default on any student loan obtained through Title IV of the Higher Education Act of 1965, unless the assistance under this subpart is used for repayment of the defaulted loans and the applicant provides evidence of this fact to the Bureau in the form of an approved repayment plan; or

(5) The dependent is subject to a denial of federal benefits under 21 U.S.C. 862.

(b) The Bureau shall deny benefits under this subpart if—

(1) The educational institution attended by the dependent fails to meet a requirement for eligibility described in § 32.32(h);

(2) The dependent's enrollment in or pursuit of the selected program of education would fail to meet the criteria established in § 32.32(g); or

(3) The dependent already is qualified by previous education or training for the educational, professional or vocational objective for which the program of education is offered.

### § 32.39 Appeals.

An applicant may, within 30 days after notification of denial, submit a written appeal request to the Bureau. Appeals will be handled consistent with § 32.24 and the appendix to this part, except that such appeals shall not be handled by oral hearing but will be conducted through a record review by an administrative hearing officer. Provisions in § 32.24 and the appendix to this part relating to oral hearings shall not be applicable to appeals under this subpart.

### § 32.40 Repayment.

In the event that the recipient of financial assistance under this subpart fails to maintain satisfactory progress, as defined in § 32.32(i), or otherwise become ineligible for assistance (other than as a result of age or the expiration of the time limit for assistance), the dependent is liable for repayment of funds awarded for prospective assist-

ance. The Director of the Bureau may waive all or part of such repayment, based on a consideration of the circumstances and the hardship that would result from such repayment.

### APPENDIX TO PART 32—PSOB HEARING AND APPEAL PROCEDURES

#### *a. Notification to Claimant of Denial*

These appeal procedures apply to a claimant's<sup>1</sup> request for reconsideration of a denial made by the Public Safety Officers' Benefits (PSOB) Office. The denial letter will advise the claimant of the findings of fact and conclusions of law supporting the PSOB Office's determination, and of the appeal procedures available under § 32.24 of the PSOB regulations. A copy of every document in the case file that (1) contributed to the determination, and (2) was not provided by the claimant shall also be attached to the denial letter, except where disclosure of the material would result in a clearly unwarranted invasion of a third party's privacy. The attached material might typically include medical opinions offered by the Armed Forces Institute of Pathology or other medical experts, legal memoranda from the Office of General Counsel of the Office of Justice Programs, or memoranda to the file prepared by PSOB Office staff. A copy of the PSOB regulations (28 CFR part 32) shall also be enclosed.

#### *b. Receipt of Appeal*

1. When an appeal has been received, the PSOB Office will assign the case and will transmit the complete case file to a hearing officer. Assignments will be made in turn, from a standing roster, except in those cases where a case is particularly suitable to a specific hearing officer's experience.

2. The PSOB Office will inform the claimant of the name of the hearing officer, request submission of all evidence to the hearing officer, and send a copy of this appeals procedure. If an oral hearing is requested, the PSOB Office will be responsible for scheduling the hearing and making the required travel arrangements.

3. The PSOB Office will be responsible for providing all administrative support to the hearing officer. An attorney from the Office of General Counsel (OGC) who has not participated in the consideration of the claim will provide legal advice to the hearing officer. The hearing officer is encouraged to solicit the advice of the assigned OGC attorney on all questions of law.

<sup>1</sup>As used in this procedure, the word, "claimant" means a claimant for benefits or, where appropriate, the claimant's designated representative.



4. Prior to the hearing, the hearing officer shall request the claimant to provide a list of expected witnesses and a brief summary of their anticipated testimony.

*c. Designation of Hearing Officers*

A. In an internal instruction the BJA Director designated a roster of hearing officers to hear PSOB appeals.

1. The hearing officers are specifically delegated the Director's authority to:

- (i) Issue subpoenas;
- (ii) Administer oaths;
- (iii) Examine witnesses; and
- (iv) Receive evidence at any place in the United States the officer may designate.

*d. Conduct of the Oral Hearing*

A. If requested, an oral hearing shall be conducted before the hearing officer in any location agreeable to the officer and the claimant.

1. The hearing officer shall call the hearing to order and advise the claimant of (1) the findings of fact and conclusions of law supporting the initial determination; (2) the nature of the hearing officer's authority; and (3) the manner in which the hearing will be conducted and a determination reached.

2. In conducting the hearing, the hearing officer shall not be bound by common law or statutory rules of evidence, by technical or formal rules or procedures, or by Chapter 5 of the Administrative Procedure Act, but must conduct the hearing in such a manner as best to ascertain the rights of the claimant.

3. The hearing officer shall receive such relevant evidence as may be introduced by the claimant and shall, in addition, receive such other evidence as the hearing officer may determine to be necessary or useful in evaluating the claim.

4. Evidence may be presented orally or in the form of written statements and exhibits. All witnesses shall be sworn by oath or affirmation.

5. If the hearing officer believes that there is relevant and material evidence available which has not been presented at the hearing, the hearing may be adjourned and, at any time prior to the mailing of notice of the decision, reopened for the receipt of such evidence. The officer should, in any event, seek to conclude the hearing within 30 days from the first day of the hearing.

6. All hearings shall be attended by the claimant, his or her representative, and such other persons as the hearing officer deems necessary and proper. The wishes of the claimant should always be solicited before any other persons are admitted to the hearing.

7. The hearing shall be recorded, and the original of the complete transcript shall be made a part of the claims record.

8. The hearing will be deemed closed on the day the hearing officer receives the last piece of evidence relevant to the proceeding.

9. If the claimant waives the oral hearing, the hearing officer shall receive all relevant written evidence the claimant wishes to submit. The hearing officer may ask the claimant to clarify or explain the evidence submitted, when appropriate. The hearing officer should seek to close the record no later than 60 days after the claimant's request for reconsideration.

*e. Determination*

1. A copy of the transcript shall be provided to the hearing officer, to the claimant, to the PSOB Office, and to the OGC after the conclusion of the hearing.

2. The hearing officer shall make his, or her, determination no later than the 30th day after the last evidence has been received. Copies of the determination shall be made available to the PSOB Office and the OGC for their review.

3. If either the PSOB Office or the OGC disagrees with the hearing officer's final determination, that office may request the BJA Director to review the record. If the BJA Director agrees to review the record, he or she will send the hearing officer's determination, all comments received from the PSOB Office, the OGC, or other sources (except where disclosure of the material would result in an unwarranted invasion of privacy), and notice of his or her intent to review the record to the claimant. The BJA Director will also advise the claimant of his or her opportunity to offer comments, new evidence, and argument within 30 days after the receipt of notification. The BJA Director shall seek to advise all parties of the final agency decision within 30 days after the expiration of the comment period.

4. If the PSOB Office and the OGC agree with the hearing officer's determination or the BJA Director declines to review the record, the hearing officer's determination will be the final agency decision and will be sent to the claimant by the PSOB Office immediately.

5. If the hearing officer's determination is a denial, all material that (1) contributed to the determination and (2) was not provided by the claimant shall be attached to the denial letter, except where disclosure of the material would result in a clearly unwarranted invasion of a third party's privacy. The claimant will be given an opportunity to request the BJA Director to review the record and the hearing officer's decision, and to offer comments, new evidence, or argument within 30 days. The BJA Director shall advise all parties of the final agency decision within 30 days after the expiration of the comment period.

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6. The PSOB Office will provide administrative support to the hearing officer and the BJA Director throughout the appeal process.

### PART 33—BUREAU OF JUSTICE ASSISTANCE GRANT PROGRAMS

#### Subpart A—Criminal Justice Block Grants

##### GENERAL PROVISIONS

###### Sec.

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- 33.2 Statutory authority.
- 33.3 OMB approval of information collection requirements.

##### ELIGIBLE APPLICANTS

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##### PURPOSES OF BLOCK GRANT FUNDS

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#### Subpart B—Bulletproof Vest Partnership Grant Program Applying for the Program

- 33.100 Definitions.
- 33.101 Standards and requirements.
- 33.102 Preferences.
- 33.103 How to apply.

AUTHORITY: Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. 3701, et seq., as amended (Pub. L. 90-351, as amended

by Pub. L. 93-83, Pub. L. 93-415, Pub. L. 94-430, and Pub. L. 94-503, Pub. L. 95-115, Pub. L. 96-157, and Pub. L. 98-473) (the Justice Assistance Act of 1984); Pub. L. 105-181, 112 Stat. 512, 42 U.S.C. 379611.

SOURCE: 50 FR 22990, May 30, 1985, unless otherwise noted.

#### Subpart A—Criminal Justice Block Grants

##### GENERAL PROVISIONS

###### § 33.1 General.

This subpart defines eligibility criteria and sets forth requirements for application for and administration of block grants by state and local governments.

[50 FR 22990, May 30, 1985, as amended at 63 FR 50761, Sept. 23, 1998]

###### § 33.2 Statutory authority.

The statutory authority for the regulations is the Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. 3701, *et. seq.*, as amended (Pub. L. 90-351, as amended by Pub. L. 93-83, Pub. L. 93-415, Pub. L. 94-430, Pub. L. 94-503, Pub. L. 95-115, Pub. L. 96-157, and Pub. L. 98-473) (hereinafter referred to as the Justice Assistance Act of 1984 or the Act).

###### § 33.3 OMB approval of information collection requirements.

The information collection requirements in this subpart A have been approved by the Office of Management and Budget under control no. 1121-0113.

[50 FR 22990, May 30, 1985, as amended at 63 FR 50761, Sept. 23, 1998]

##### ELIGIBLE APPLICANTS

###### § 33.10 State government.

All states are eligible to apply for and receive block grants. Section 404 of the Act. State, as defined in the statute, means any state of the United States and includes the District of Columbia, the Commonwealth of Puerto Rico, and the Virgin Islands. Section 901(a)(2) of the Act.